

# DBE/ACDBE Monitoring & Enforcement



**Federal Aviation  
Administration**

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*ACHIEVING SAFETY  
THROUGH DIVERSITY*



# Monitoring and Enforcement

## 1) Regulatory Requirements

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2) Strategies for Implementation

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- 2) Strategies for Implementation
- 3) Self-Assessment

# Regulatory Requirements

49 CFR 26.37:

- (a) Implement Appropriate Mechanisms to Ensure Compliance by All Program Participants

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- (b) Ensure Work Committed to DBEs is Performed by DBEs as indicated in letters of intent (LOI)

# Regulatory Requirements

49 CFR 26.37:

- (a) Implement Appropriate Mechanisms to Ensure Compliance by All Program Participants
- (b) Ensure Work Committed to DBEs is Performed by DBEs as indicated in LOI
- (c) Running Tally of DBE Participation

# Regulatory Requirements: Appropriate Compliance Mechanisms

## Create [Written](#) Policies and Procedures for Contract and Worksite Reviews

- Create a document certifying that DBE contracts and worksites are inspected
- Document must detail exactly what was reviewed, by whom, and when
- Airport staff, like Concessions Managers and Construction Managers, are ideal staff to help conduct and process written certification reviews



# Regulatory Requirements: Appropriate Compliance Mechanisms

## Prompt Payment Mechanisms

Create Written Policies and Procedures as  
Appropriate

- **Prompt Payment & Retainage Verification  
Process**

# Regulatory Requirements: Appropriate Compliance Mechanisms

Create Written Policies and Procedures as Appropriate  
The Termination Process

- **Process for terminating DBE subcontracts must be clearly defined in the airport's DBE Program AND within each DBE/ACDBE subcontract.**
- **Prime must notify the airport and DBE/ACDBE of request to terminate and allow 5 days for the firm to respond to allegations, if desired.**

# Regulatory Requirements: Appropriate Compliance Mechanisms

## Identify Appropriate Enforcement Mechanisms

- Progressive discipline policy
  - **Breach of Contract Remedies**



# Regulatory Requirements: Appropriate Compliance Mechanisms

## Identify Appropriate Enforcement Mechanisms

- Progressive discipline policy
  - **Reporting DBE Fraud**

**FRAUD**

# Enforcement Tools

- What does the contract say?
- Ensure Prime and DBE contracts clearly define enforcement procedures.



# Enforcement Tools

- What does the contract say?
- Withhold progress payments, but realize it may cause payments to DBE firms to be withheld



# Enforcement Tools

- What does the contract say?
- Terminate contract, as a last resort



# Enforcement Tools

- What does the contract say?
- Internal prequalification  
process remedies: e.g.,  
debarment





# Enforcement Tools

## Enforcement Actions – Contractors – 49 CFR §26.107

- Involve **OIG**
- **Suspension / Debarment**
  - ❑ False Representation as DBE
    - ❑ Creating a front
    - ❑ Using DBE that does not work
  - ❑ Attempt to use ineligible firm
  - ❑ Over-reporting



# Regulatory Requirements: Ensure DBE's Performance of Contracts

## Written Certification of Contract Review

- Contract Review Process
  - DBE Subcontract Review



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## Written Certification of Work-Site Monitoring

- Site Visit reports / forms
- Follow-up reports (If required)



# Regulatory Requirements: Ensure DBE's Performance of Contracts

Project Oversight is a Team Effort!

- Involve Project Inspectors and Project Engineers
- **Create** DBE Oversight as essential job function of multiple parties



# Regulatory Requirements: Running Tally of DBE Participation

- Ensure Prime is Meeting DBE Commitment



# Regulatory Requirements: Running Tally of DBE Participation



- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments

# Regulatory Requirements: Running Tally of DBE Participation



- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments
- Track Payments made to DBEs

# Strategies for Implementation

## Complaint Investigations

- **Specific Allegations** of Non-compliance



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## Compliance Reviews

- Overall Assessment of **DBE Program Implementation**

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## Complaint Investigations

- **Specific Allegations** of Non-compliance

## Compliance Reviews

- Overall Assessment of **DBE Program Implementation**

## Enforcement Actions

- Conciliation Agreement
- Finding of Non-Compliance
- Restrict Drawdowns of Funds
- Inability to Start, Continue, or Complete DOT-assisted Projects

# Self-Assessment

- How are you reviewing initial participation plans and letters of intent (commitments)?
- How are you currently monitoring contracts and worksites to ensure they match commitments?
- How do you track and compare commitments and payments?
- How often do you monitor?
- What are your enforcement provisions?

# Questions?



Thank You!

